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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 - - - - - x

5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS INC.,

7 Debtor.

8 - - - - - x

9 ADV. PROC. NO.: 15-01112-scc

10 LEHMAN BROTHERS HOLDINGS INC., ET AL.,

11 Plaintiffs

12 v

13 U.S. BANK NATIONAL ASSOCIATION, ET AL.,

14 Defendants.

15 - - - - - x

16 U.S. Bankruptcy Court

17 One Bowling Green

18 New York, New York

19

20 July 1, 2015

21 9:03 AM

22

23 B E F O R E :

24 HON SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

Page 2

1 Adversary proceeding: 15-01112-scc Lehman Brothers Holdings  
2 Inc. et al v. U.S. Bank National Association et al  
3 Doc #2 Motion of Lehman Brothers Holdings Inc. and  
4 Structured Asset Securities Corporation for an Order to  
5 Enforce the Modified Third Amended Joint Chapter 11 Plan of  
6 Lehman Brothers Holdings Inc. and Its Affiliated Debtors and  
7 Stay a Related Third-Party Action

8

9 Adversary proceeding: 15-01112-scc Lehman Brothers Holdings  
10 Inc. et al v. U.S. Bank National Association et al  
11 Doc #3 Lehman's Motion for Entry of an Order (A) Authorizing  
12 the Filing of Certain Information Under Seal in Connection  
13 with Lehman's Adversary Proceeding Against U.S. Bank N.A.,  
14 Syncora Guarantee, Inc., and GreenPoint Mortgage Funding,  
15 Inc., and Lehman's Motion for Stay of the GreenPoint  
16 Litigation, and (B) Granting Related Relief

17

18 Doc #49703 Motion for Approval of Settlement Agreement  
19 Relating to Airlie LCDO I (Aviv LCDO 2006-3) Credit Default  
20 Swap Agreement and Indenture

21

22 Doc #49709 Motion of Lehman Brothers Holdings Inc. for  
23 Extension of the Period to File Objections to and Requests  
24 to Estimate Claims

25 Transcribed by: Sherri L. Breach

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1 P R O C E E D I N G S

2 THE COURT: All right. We're ready when you are.

3 MR. COSENZA: Your Honor --

4 THE COURT: Yes.

5 MR. COSENZA: -- Todd Cosenza from Willkie, Farr &  
6 Gallagher. I'm here with my partner, Paul Shalhoub and Tim  
7 McGinn --

8 THE COURT: Okay.

9 MR. COSENZA: -- and we represent the plan  
10 administrator, Lehman Brothers Holdings, Inc.

11 THE COURT: All right. Good morning.

12 MR. BURKE: Good morning, Your Honor. Kevin Burke  
13 from Cahill, Gordon & Reindel representing GreenPoint  
14 Mortgage funding. With me is Joel Levitin, also from Cahill  
15 Gordon, and James Murphy from the McGonigle Murphy firm --  
16 Murphy McGonigle firm representing GreenPoint as well.

17 THE COURT: Okay. Good morning.

18 MR. VOGEL: Good morning, Your Honor. Michael  
19 Vogel from Allegaert Berger & Vogel. I'm representing  
20 Syncora Guarantee, and I'm here with my partner, John Craig,  
21 and my colleague, Lauren Pincus.

22 THE COURT: All right. Very good. Thank you.

23 MS. BOLAND: Good morning, Your Honor.

24 THE COURT: Good morning.

25 MS. BOLAND: Connie Boland of Nixon Peabody

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1 representing U.S. Bank as Indenture Trustee. And I have my  
2 colleague Amnica Bianco with me.

3 THE COURT: Okay. Very nice.

4 Okay. Mr. Cosenza.

5 MR. COSENZA: Your Honor, may I approach?

6 THE COURT: Sure.

7 MR. COSENZA: Good morning, Your Honor. May it  
8 please the Court.

9 Before getting to the details of the motion that's  
10 pending before the Court --

11 THE COURT: I -- as you know and everybody should  
12 know I've read everything. So don't --

13 MR. COSENZA: Sure.

14 THE COURT: -- feel obligated to go over what's in  
15 the papers.

16 MR. COSENZA: I do want to give just an overall  
17 sense of --

18 THE COURT: Sure.

19 MR. COSENZA: -- how the plan administrator is  
20 viewing the claims that are pending against Lehman Brothers  
21 and sort of give an assessment of where this all fits in so  
22 you --

23 THE COURT: Sure.

24 MR. COSENZA: -- can bet a better understanding of  
25 why we're here today.

1           So this case concerns three massive proof of  
2 claims, two that have been brought by U.S. Bank; one that's  
3 been brought by Syncora. The plan administrator views it  
4 as, in essence, a single claim involving one transfer or  
5 trust. U.S. Bank was the trustee for that trust and  
6 Syncora, which at this point controls the trustee, acted as  
7 the insurer for losses incurred by that trust.

8           We are bringing this action and seeking a  
9 temporary stay of the New York action involving GreenPoint  
10 and U.S. Bank because Lehman has little choice here, Your  
11 Honor.

12           As a plan administrator there are massive claims  
13 pending before the Bankruptcy Court that are going to be  
14 directly impacted by what's -- what's happening in the New  
15 York action, and we've become aware of sort of the  
16 motivations and what's been going on in the New York action  
17 really over the last year as to how it's going to impact the  
18 estate.

19           And Lehman, as the plan administrator, believes  
20 this is the best forum to adjudicate the dispute for all the  
21 claims brought by all the parties. And that includes  
22 GreenPoint, U.S. Bank, Syncora and the plan administrator.

23           U.S. Bank, as the holder of two of the massive  
24 claims that were brought in the Bankruptcy Court, has  
25 admitted in its New York State Court action against

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1 GreenPoint that Lehman would not be liable if U.S. Bank  
2 succeeds there against GreenPoint.

3 Lehman, nonetheless, nevertheless is stuck in the  
4 middle of U.S. Bank and Syncora's dispute with GreenPoint,  
5 and U.S. Bank, as they indicate in their objection, they  
6 would like to have that remain that way indefinitely. They  
7 are basically treating the claim that's pending in the New  
8 York Court as insurance. And actually -- I'm sorry --

9 THE COURT: You don't agree with that, though?

10 MR. COSENZA: Sorry.

11 THE COURT: You don't agree with that?

12 MR. COSENZA: No. No, we don't.

13 THE COURT: I mean, and you make that clear, I --

14 MR. COSENZA: Yes.

15 THE COURT: -- think, in a footnote in your papers  
16 --

17 MR. COSENZA: Correct.

18 THE COURT: -- right?

19 MR. COSENZA: And -- and, Your Honor, we, at this  
20 point, as a plan administrator need to become unstuck and we  
21 need to have the claims that have been brought here by U.S.  
22 Bank and Syncora, we need to have those claims moved forward  
23 as best we can as the plan administrator.

24 If, as U.S. Bank -- just to give you a rough  
25 overview of how we view this. If U.S. Bank as it admits

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1 elsewhere, if Lehman isn't liable and GreenPoint is, the  
2 U.S. Bank claim should be disallowed because U.S. Bank will  
3 be able to recover against GreenPoint.

4 If Lehman, as the plan administrator, is liable,  
5 U.S. Bank's claim should go through the RMBS protocol that  
6 was set up in December as one of the transferred trusts as  
7 the Court has ordered other put-back litigation involving  
8 U.S. Bank. And if that's the case, whatever the damages  
9 that flow after those -- after the -- this trust is put  
10 through the protocol Lehman will then pursue whatever  
11 indemnification rights it has against GreenPoint.

12 And that would leave whatever is left as -- of the  
13 Syncora claim. We believe the Syncora claim is largely  
14 duplicative of the U.S. Bank claim. But to the extent there  
15 are additional damages that are being sought by Syncora, we  
16 would like for them to state exactly what they are and with  
17 some specificity as to what they're seeking in addition to  
18 the losses that were incurred by U.S. Bank as the trustee  
19 for the trust.

20 At this point there is \$600 million reserved for  
21 the Syncora claim and, I mean, as the plan administrator we  
22 believe that that \$600 million reserve is very, very -- is  
23 over -- we basically over-reserved for that amount. That's  
24 sort of our view. And we believe that Syncora's damages are  
25 much lower than that and they're here and they can tell us

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1 -- tell you exactly what their losses are. But we believe  
2 they are several hundred million dollars lower than the \$600  
3 million reserve.

4 So we're asking this Court to stay the GreenPoint  
5 litigation so that a couple of threshold issues can be  
6 resolved here first so that the plan administrator can  
7 understand exactly the extent that the claims that U.S. Bank  
8 and Syncora have brought here and what the value of those  
9 claims are.

10 And that's -- that's why we're here today, Your  
11 Honor.

12 There are several bases in which we believe, and  
13 we outlined these in our papers, that we believe the Court  
14 can issue -- you know, can enjoin the State Court action.

15 THE COURT: So let -- before we get to that, so go  
16 back to the -- to the statement you just made, issues that I  
17 will resolve first if the State Court action were stayed.  
18 What would those issues be?

19 MR. COSENZA: So those would be whether or not  
20 there's certain definition as to what a -- I may get the  
21 exact defined term wrong -- securitization transaction is,  
22 and that would indicate whether or not U.S. -- basically  
23 resolving that issue would determine whether not U.S. Bank's  
24 claim against GreenPoint is valid; that GreenPoint has moved  
25 for summary judgment saying that that -- that, you know,

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1 whatever happened in terms of the assignments doesn't allow  
2 U.S. Bank to pursue GreenPoint. There is basically a --

3 THE COURT: That -- that's what's people -- what  
4 folks call the standing issue?

5 MR. COSENZA: Correct.

6 THE COURT: So -- okay. So then my next question  
7 is even if the State Court were to decide that issue  
8 tomorrow and decide it in a way that was not the way Lehman  
9 wanted it decided.

10 MR. COSENZA: Uh-huh.

11 THE COURT: Lehman's not a party to that  
12 litigation --

13 MR. COSENZA: Correct.

14 THE COURT: -- right? I could do whatever I want  
15 when the issue came before me.

16 MR. COSENZA: That is correct, Your Honor.

17 THE COURT: Okay.

18 MR. COSENZA: We wouldn't be bound by that,  
19 whatever determination. Obviously, I think we would hear  
20 from GreenPoint.

21 THE COURT: I mean --

22 MR. COSENZA: Yeah.

23 THE COURT: -- just let me say out loud, I'll say  
24 it 16 times because try as you might, things that get said  
25 in courtrooms get taken out of context. So let nothing that

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1 I say today reflect any negative thought, inference or  
2 anything of the kind vis-à-vis what's happening in the State  
3 Court.

4 MR. COSENZA: Okay. Correct.

5 THE COURT: So that's very important that  
6 everybody understand that. I mean, the relief that you're  
7 requesting is that I stay a State Court action. So  
8 necessarily we're going to be talking about it, but I don't  
9 want there to be any --

10 MR. COSENZA: But --

11 THE COURT: -- negative inference taken out --

12 MR. COSENZA: Sure.

13 THE COURT: -- out of context.

14 MR. COSENZA: Your Honor, and the issue we're  
15 asking you -- we would ask to tee up before you would be a  
16 limited issue, and assuming we were to prevail on that  
17 issue, that would basically permit the disallowance of the  
18 U.S. Bank claim because U.S. Bank would have whatever relief  
19 they would have against GreenPoint. GreenPoint is a party  
20 here and that issue would be resolved. And that would be a  
21 -- obviously, a very helpful result for the plan  
22 administrator in terms of trying to understand the magnitude  
23 of these claims because then all we would have to deal with  
24 at that point is the Syncora claim, which at this point is  
25 somewhat of an amorphous claim that we're trying to wrap our

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1 arms around. At that point we could try to get more  
2 specificity as to what Syncora is seeking in addition to  
3 what U.S. Bank was seeking.

4 We believe that Syncora's claims are basically the  
5 same as the U.S. Bank claim, so we will argue that if the  
6 U.S. Bank claim goes away and in essence U.S. Bank can only  
7 pursue GreenPoint, the Syncora claim would be subsumed  
8 within that. So we would -- and we would argue that before  
9 you.

10 But obviously that would then eliminate three  
11 massive claims for the estate just resolving one threshold  
12 issue, and that's why we're here today.

13 THE COURT: And remind me what the history is with  
14 respect to how these reserve amounts were either ordered or  
15 agreed upon?

16 MR. COSENZA: Sure. Your Honor, I wasn't privy to  
17 those, but my understanding is initially there was a reserve  
18 that was set up for over a billion dollars for this when  
19 this first was being discussed. And I think there -- there  
20 was a motion made by Lehman, maybe it was a little over a  
21 year ago, to subordinate the Syncora claim. I think as part  
22 of that motion, which was, you know, teed up, I think there  
23 was an agreement to table -- to table that action and to  
24 lower the reserve to \$600 million.

25 I don't think we've ever been in a position, at

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1 least in a judicial proceeding, to understand the value of  
2 Syncora's claim.

3 THE COURT: Okay.

4 MR. COSENZA: So that's the background to that.

5 But, Your Honor, one other thing I would like to  
6 sort of go through is -- and it's a big point in the papers  
7 that were put forward before you -- that Lehman is a massive  
8 estate. There are lots of issues that are sort of, you  
9 know, that we deal -- that Lehman and Matt Cantor (ph), who  
10 is the general chief legal officer of Lehman, deal with on a  
11 daily basis.

12 It's only become clear to us within the last year  
13 as to how Syncora and others are sort of viewing their claim  
14 against the estate, sort of leaving in the background seeing  
15 what happens in the GreenPoint litigation. And the  
16 statements made in September of 2014 to the State Court  
17 judge talking about how the claims against Lehman basically  
18 would go away if U.S. Bank proceeds against -- wins against  
19 GreenPoint. Those are statements only made in September of  
20 2014. And those, for us, really highlighted sort of the  
21 issue, you know, basically elevated it to us, figuring out  
22 we need to take some sort of action.

23 In addition, the protocol was that basically  
24 subsumes the other U.S. Bank proof of claim was only  
25 approved in December. So there's a lot of comments made

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1 about our delay, but really there have been a series of  
2 events over the last six months that have led us to coming  
3 before you today. And we have made a lot of efforts over  
4 the last few months trying to mediate these -- this dispute  
5 to avoid coming before you. And, unfortunately, those  
6 efforts were unsuccessful.

7 So we're here today seeking a stay.

8 Your Honor, I know you've read the papers. I can  
9 go through --

10 THE COURT: So -- so --

11 MR. COSENZA: -- so --

12 THE COURT: -- so then let's go to the question of  
13 -- and I think this was raised by at least one of the  
14 objecting parties, which is on the one hand you want to move  
15 forward, you want a resolution and they say, what would  
16 staying the State Court action accomplish. On its face that  
17 seems contrary to your goal, your stated goal of moving  
18 things along.

19 So if a stay were to be entered, how does that  
20 help?

21 MR. COSENZA: Well, it helps in this regard, Your  
22 Honor. We've quickly briefed the issues before you that we  
23 think are important to the estate. We do believe, because  
24 we're not a party to the New York State Court action, the  
25 summary judgment motion has been pending for quite some

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1 time. Regardless of the outcome of that motion, the New  
2 York State Court system, as you know, allows for  
3 interlocutory appeals. That process will take at least  
4 another year if not much longer. So the estate is going to  
5 be tied up waiting for a final determination in the New York  
6 State Court proceedings for quite some time.

7 THE COURT: But that's the part that I don't  
8 understand.

9 MR. COSENZA: Yes.

10 THE COURT: The part that I don't understand is --  
11 and you confirmed that seven minutes ago; that I've got lots  
12 of tools in my toolbox --

13 MR. COSENZA: Uh-huh.

14 THE COURT: -- that I can employ to lower the  
15 reserve, make rulings on dispositive issues, compel parties  
16 to engage in ADR protocols, et cetera. I just need someone  
17 to ask me. I won't --

18 MR. COSENZA: We would ask --

19 THE COURT: I won't volunteer it.

20 MR. COSENZA: We would ask for all of those, Your  
21 Honor.

22 (Laughter)

23 MR. COSENZA: Those are all very valuable tools  
24 for the plan administrator.

25 THE COURT: Sure. But my -- my main -- when I

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1 read the papers the implication was that somehow those tools  
2 weren't available to me and I needed to stay the State Court  
3 litigation so that I could open my toolbox. And I don't  
4 think that that's necessarily the case.

5 MR. COSENZA: Well, Your Honor, there's also a  
6 general concern by the plan administrator, which has  
7 somewhat been alleviated by your comments, that a  
8 determination in the State Court proceedings where we're not  
9 a party will really be used as heavy evidence against us in  
10 this action. And I think your comments that, you know --

11 THE COURT: Again, with -- with the utmost respect  
12 --

13 MR. COSENZA: Yeah.

14 THE COURT: -- to the -- whoever is determine --  
15 making that determination, whichever way it comes out, the  
16 rules of collateral estoppel, res judicata, and all that  
17 other good stuff, you're not a party. So you're not bound.  
18 Frankly, you know, it is what it is.

19 I don't know if -- I'm not going to give you an  
20 advance ruling on what weight it would be entitled to, but  
21 it's -- it would just be something that occurred out there  
22 and I don't know that it would have any effect at all. I'm  
23 going to -- I would hear -- if there were a factual issue,  
24 there would be a record. I would hear evidence that I would  
25 hear and I can interpret the law myself.

1 MR. COSENZA: Sure.

2 THE COURT: And that's what I would do. So --

3 MR. COSENZA: Your Honor, I can caucus my client,  
4 but in terms of the tools that you mentioned that are  
5 available to you, I think all of those we would request be  
6 put into play.

7 One, we would ask for, you know, some swift  
8 determination on this assignment issue or as you described  
9 it the standing issue. I think it's a pure legal issue that  
10 can be decided looking at the underlying documents.

11 THE COURT: I mean, I --

12 MR. COSENZA: The --

13 THE COURT: -- I'm not well versed in the nitty  
14 gritty of the legal point.

15 MR. COSENZA: Yes.

16 THE COURT: But we've been faced with so-called  
17 assignment standing issues in other contexts and we've dealt  
18 with them pretty quickly.

19 MR. COSENZA: Uh-huh.

20 THE COURT: So that's -- that's not a problem.

21 MR. COSENZA: So that would be number one.

22 Number two would be the issue of the Syncora  
23 reserve, which we think at this point is -- you know, should  
24 be lowered and we can find out from -- they're here, as to  
25 what their actual losses are. And any other mechanism that

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1 we use to get the parties sort of moving would also be  
2 greatly appreciated by the plan administrator.

3 THE COURT: Okay. All right.

4 MR. COSENZA: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. BURKE: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. BURKE: Kevin Burke of Cahill, Gordon &  
9 Reindel for GreenPoint Mortgage Funding.

10 Mr. Cosenza has just made out a great case for why  
11 the adversary proceeding is appropriate, but he has not made  
12 out any case for why a stay is appropriate.

13 THE COURT: Well, he was busy answering my  
14 questions. So --

15 (Laughter)

16 MR. BURKE: True. But the papers don't make out  
17 any case for a stay either.

18 What we have here is a case that is proceeding to  
19 decision on summary judgment motions that have been argued,  
20 briefed, argued and are now sub judice before the judge.  
21 The determination will come when it comes, but as conceded  
22 by the debtors, it's not a determination that will be  
23 binding on the debtors or on Lehman in any way.

24 So letting that proceed may inform your -- Your  
25 Honor on similar issues. It may provide some background of

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1 what a New York State judge thinks of the law in that area,  
2 but as you pointed out, you will be able to make your own  
3 determination.

4 So what --

5 THE COURT: But isn't it the case that -- and Mr.  
6 Cosenza I -- makes the point, which I -- which we all know.  
7 I mean, there will be an appeal. One way or the other there  
8 will be an appeal. There will be a --

9 MR. BURKE: So --

10 THE COURT: -- multiple appeals.

11 MR. BURKE: Sure.

12 THE COURT: It could take another couple of years.

13 MR. BURKE: Sure.

14 THE COURT: Won't you, in some way, seek to use  
15 that -- won't the parties who are opposing the debtors'  
16 motion seek to use all of that in some way to convince me  
17 that, for example, I can't cut down the amount of the  
18 reserve?

19 MR. BURKE: Your Honor, they may try to convince  
20 you of that, but there's no binding effect. So staying all  
21 of that, all that does is reduce the amount of information  
22 that's available to Your Honor about what the legal issues  
23 are. It doesn't enhance the debtors or Lehman's ability to  
24 pursue the remedies that they've suggested: Reducing the  
25 type of -- the amount of the reserve, getting a

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1 determination standing issues, none of that is deterred and  
2 all that can go ahead here as it should under the -- in the  
3 adversary proceeding in the ordinary course following the  
4 rules for the adversary proceeding; following rules for  
5 estimation; following whatever rules that -- whatever the  
6 toolbox is that is available to Your Honor for all of those  
7 issues.

8 Stopping it, all that does is makes sure that  
9 there isn't a ruling that might go their way. If it goes  
10 their way, yes, there might be appeals, but at least there's  
11 a determination. And, of course, they would argue as to our  
12 client or as to -- or let's say U.S. Bank would then say,  
13 okay, we won that -- that point. It's over.

14 GreenPoint is not a party to this bankruptcy.  
15 We've not been here before. We've not -- don't have any  
16 proof of claim. We are a true non-party to this process but  
17 for the adversary. And so we think that there's no basis  
18 for the Court to exercise its jurisdiction over the State  
19 Court since there's so limited a connection between what's  
20 going on in the State Court and what Your Honor could do  
21 here.

22 If we look at what Lehman has asserted its  
23 prejudices here, what the connection is. They say  
24 inconsistent determination is a problem. Not for them.  
25 It's not binding on them. Your Honor will be free to

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1 determine whatever you wish to determine when you look at  
2 the facts and the law. That was on -- it will probably be  
3 page 2. And they conceded that it's not binding on them in  
4 the reply brief in paragraph 12.

5 The second thing they say is that a stay would  
6 defeat GreenPoint's efforts to keep this Court from deciding  
7 the validity of Lehman Bank's assignment to Lehman Brothers  
8 Holding and assessing its responsibility as mortgage  
9 originator to indemnify Lehman in the event Lehman is liable  
10 to one of the other defendants.

11 Well, that's at reply brief page 3. What efforts  
12 are they talking about? We haven't been here. We haven't  
13 made any efforts to limit the scope of indemnification.  
14 Whatever they are they are and they'll be determined in the  
15 ordinary -- in the course of the proceedings.

16 And prior to this -- the filing of this adversary  
17 proceeding we've not been here to take any positions. If  
18 they're talking about some position that was taken in the  
19 settlement discussion that's not appropriate here anyway.

20 But as our objection makes clear, in the State  
21 Court the issue of Lehman's entitlement to indemnification  
22 has never been raised, will not be decided there, not at  
23 all, not later in the case, not ever in the case. That's  
24 just not there.

25 The third point Lehman makes is that they -- they

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1 need to stay this action because Syncora and U.S. Bank  
2 continue to impose the specter of direct impact on at least  
3 600 million of reserves. That's reply brief paragraph 2.

4 As stated above -- earlier, Your Honor has ample  
5 tools to deal with the reserves, either on a final basis, on  
6 an estimation basis, on all sorts of bases you can deal with  
7 the reserves. The State Court cannot. The State action  
8 does not have any issue in it about the reserves in this  
9 bankruptcy case. Only Your Honor can address those issues.

10 And whether Syncora has a right to rely on the  
11 Lehman representations is also not present in the State  
12 Court action. Syncora is not even a party there. They've  
13 been dismissed as a party in that case. So that's not going  
14 to be determined in the State Court case.

15 And then the last point that Lehman makes is  
16 whether Lehman and creditors have and will continue to be  
17 harmed by the manner in which the GreenPoint litigation  
18 which accounting for certain appeals will continue  
19 indefinitely. That's the point Your Honor raised earlier.  
20 And that has given Syncora and U.S. Bank the strategic  
21 opportunity to try and extract an unwarranted recovery from  
22 Lehman. That's precisely what Your Honor can deal with with  
23 the toolbox available to you. You don't need a stay of a  
24 judge's decision that is fully briefed and argued. There's  
25 nothing else going on in that case. That case is stayed

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1 pending that decision.

2                   If, after that decision, there's something going  
3 on that's somehow actually does affect Lehman or its estate,  
4 they can come back to Your Honor for the stay. But we don't  
5 expect that to happen and there's certainly nothing in the  
6 motion that's before the judge currently that has any impact  
7 other than potential stare decisis persuasive impact on Your  
8 Honor's decision that warrants a stay.

9                   THE COURT: Okay. Thank you.

10                  (Pause)

11                  THE COURT: Good morning.

12                  MR. VOGEL: Good morning. Excuse me. Good  
13 morning, Your Honor. Michael Vogel for Syncora Guarantee.

14                  I had prepared this morning to talk to you about  
15 what I thought was a very clear, practical consideration  
16 that staying a summary judgment proceeding that has been sub-  
17 judice since October was not a very practical way to lead to  
18 a faster resolution of the issue. It seems to me that issue  
19 is amply clear to Your Honor so I won't -- I won't belabor  
20 that point, although I --

21                  THE COURT: Well, I don't know. You can never  
22 assume that my questions mean that I'm leaning to a  
23 particular way.

24                  MR. VOGEL: Well, I will tell you -- I will tell  
25 you my views on that, but then I do want to --

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1 THE COURT: Okay.

2 MR. VOGEL: -- address a few things that -- that  
3 Lehman specifically raised.

4 So as I said, Your Honor --

5 THE COURT: I mean, my overarching point is that  
6 as in any litigation time is somebody's friend and time is  
7 somebody's enemy.

8 Here the plan administrator entirely appropriately  
9 wants to do his job and administer the estate, wants to give  
10 money to people who have been waiting for years and years to  
11 get money. So anything that looms as a significant  
12 impediment to doing that is of concern here.

13 So to the extent that there is -- there are  
14 massive claims that are seen to be -- being the resolution  
15 of which is being delayed by other stuff, you know, that's a  
16 -- that's a legitimate concern. Reserves are meant to be  
17 protective and conservative. But at a certain point when --  
18 if and when it becomes clear that there are duplicative or  
19 over-reserves, those ought to come down because we're not  
20 talking about, you know, tens of thousands of dollars.  
21 We're talking about hundreds of millions of dollars and  
22 that's -- that's real money to real folks who are waiting to  
23 be paid.

24 So the nexus between the two actions is important  
25 and is of interest to me, and I think that it's not a

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1 thousand percent clear that it ought not be stayed. It --  
2 this is like a -- I hate to use the word Rubik's cube, but  
3 there's a Rubik's cube aspect to it.

4 So, anyway, so say -- say what would you like.

5 MR. VOGEL: Okay. Okay. Fair enough, Your Honor.  
6 And I would only say in response to those comments I think  
7 one -- one point that appears to me clear here is that we're  
8 all in agreement since the plan administrator seems to think  
9 standing is delaying those legitimate goals, I think we're  
10 therefore all in agreement that we would like standing to be  
11 resolved quickly. I think all four of the attorneys here  
12 will say that to Your Honor.

13 And our view is that we don't think that staying a  
14 proceeding that's sub judice, was argued in September, you  
15 know, we're -- I hate to tell you 12 briefs on that as well  
16 as a letter brief, so 13 briefs, 275 exhibits, expert  
17 affidavits, it's a big record that we -- we would be  
18 providing Your Honor plus whatever Lehman would want to put  
19 in. I don't know that staying that -- and then post-  
20 argument, I would add we do have some direct evidence that  
21 Justice Freedman was working on it because she came back  
22 with specific questions and the parties submitted something  
23 subsequent to argument jointly on that.

24 So I am concerned that stopping that when, as you  
25 say, the decision could come down tomorrow, we don't think

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1 is a practical way to lead to a quicker resolution.

2 Now Your Honor raised the issue of Your Honor also  
3 addressing the standing issue. That's not something we  
4 object to. We're in favor of a quick resolution of the  
5 standing issue. We feel strongly that U.S. Bank has a  
6 position that it's going to prevail on that and we're --

7 THE COURT: So --

8 MR. VOGEL: -- not objecting to that.

9 THE COURT: So tell me what's the alleged amount  
10 of Syncora's claim against LBHI?

11 MR. VOGEL: Syncora's claim, I think the reserve  
12 is about 600 million now and that is based on principally  
13 Syncora's paid out costs under its insurance policy. There  
14 are some other things. There are attorneys' fees, et  
15 cetera. But that's -- that's the biggest piece of it.

16 There is going to be some --

17 THE COURT: Wait. So let me understand this. So  
18 Syncora has already gone out of pocket 600 million?

19 MR. VOGEL: That -- that I believe is the  
20 approximate amount of what its paid plus what it anticipates  
21 paying based on the current -- based on the current --

22 THE COURT: Hold on. I'm -- I'm --

23 MR. VOGEL: May I finish?

24 THE COURT: There's about to be an objection.

25 MR. COSENZA: No, Your Honor. I just -- this is

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1 -- it's -- I'm sorry to interrupt. But this is sort of one,  
2 I think, a threshold issue that needs to be set forward by  
3 Syncora. This amount keeps on, you know --

4 THE COURT: Well, that's why I'm asking --

5 MR. VOGEL: Well --

6 THE COURT: -- the question. So I --

7 MR. VOGEL: -- and -- and I --

8 THE COURT: -- I'm trying to -- this is not  
9 evidence.

10 MR. VOGEL: No.

11 THE COURT: I am just trying to understand what's  
12 going on.

13 MR. VOGEL: It -- it's --

14 THE COURT: So --

15 MR. VOGEL: -- not evidence and if I may add it's  
16 based on not having reviewed these numbers in preparation  
17 for this particular hearing. So --

18 THE COURT: Okay.

19 MR. VOGEL: -- I hope you'll understand if any of  
20 this might need --

21 THE COURT: That's fine.

22 MR. VOGEL: -- to be --

23 THE COURT: That's fine. I --

24 MR. VOGEL: -- corrected.

25 THE COURT: -- would like to know what's going on.

1       So --

2           MR. VOGEL: But --

3           THE COURT: -- it seems to me one important thing  
4 for me to understand is what your claim is.

5           MR. VOGEL: Absolutely. And all these numbers, I  
6 hope you would understand we would --

7           THE COURT: Of course.

8           MR. VOGEL: -- give you precise numbers.

9           THE COURT: It's not evidence.

10          MR. VOGEL: Conceptually, though, it's insurance  
11 payments. It's anticipated future insurance payments. It's  
12 legal fees. Now there are -- I do need to disclose to Your  
13 Honor conceptually there are post-closing of the  
14 securitization transactions -- I assume that's why Lehman is  
15 standing up -- that were a benefit to Syncora and that --  
16 Lehman, I'm sure, is going to take the position mitigate  
17 that damages number.

18           That's an issue that Your Honor is going to have  
19 to resolve because that -- that will be --

20          THE COURT: Okay. But you --

21          MR. VOGEL: -- briefed.

22          THE COURT: But you don't have the ability to  
23 differentiate between out of pocket already paid versus what  
24 you anticipate?

25          MR. VOGEL: Not -- not standing here. My

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1       recollection is more of it is already paid than to be paid  
2       in the future by a substantial amount, but I --

3           THE COURT: And paid -- and paid to whom?

4           MR. VOGEL: Paid into the trust which then --

5           THE COURT: Okay.

6           MR. VOGEL: -- pays it under the --

7           THE COURT: Right.

8           MR. VOGEL: -- trust documents.

9           THE COURT: So -- so to the extent that you paid,  
10      U.S. Bank doesn't get a double dip, right?

11           MR. VOGEL: Well, U.S. Bank is made whole by our  
12      payments to U.S. Bank.

13           THE COURT: Yes.

14           MR. VOGEL: But --

15           THE COURT: So, therefore, to the extent that U.S.  
16      Bank is made whole, they don't get to go to Lehman and say,  
17      pay me again, right?

18           MR. VOGEL: U -- well, no, because U.S. Bank has  
19      liabilities including to us. It's a little bit complicated  
20      and I apologize that that -- that wasn't something that I  
21      prepared to explain. It's something that I --

22           THE COURT: Okay.

23           MR. VOGEL: -- would request the opportunity to  
24      explain how that all works.

25           THE COURT: Sure. I'm not -- this is all

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1 background.

2 MR. VOGEL: But -- yeah. And, also -- but since  
3 we're in that area of background, I do object to the idea  
4 that Syncora's claim and the U.S. Bank's claim are identical  
5 or close to identical.

6 Your Honor is correct. There cannot be double  
7 payment and there will be circumstances in which a recovery  
8 to U.S. Bank would reduce Syncora's claim, and there will be  
9 circumstances in which a recovery to Syncora's claim will  
10 reduce U.S. Bank's claim. But it's -- and it's not quite as  
11 simple as just saying these are identical claims. And in  
12 the Southern Circuit in the In re: Delta case explains that  
13 the way you deal with that, when you have two related, but  
14 different claims -- and these are very different claims.  
15 One is for repurchase and --

16 THE COURT: Sure. I understand.

17 MR. VOGEL: -- one is for indemnification. When  
18 you have those two different claims they proceed and then  
19 you have to, you know, work it out so that you don't have  
20 double recovery. And we're not seeking double recovery to  
21 be clear.

22 But it's not very simple to just stand here today  
23 and say --

24 THE COURT: Sure.

25 MR. VOGEL: -- here's what's black --

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1 THE COURT: I understand. I understand.

2 MR. VOGEL: Okay. And even just to add a little  
3 bit to that, it may depend literally on which loans are  
4 found to be breaching, which reps and warranties vis-à-vis  
5 my client are found to be breaching. It's not simply I can  
6 say this is the theory. It kind of has to be litigated and  
7 played out.

8 Staying for a moment with the -- I think I've  
9 actually said what I've had to say about the practical  
10 considerations of staying the State Court action. I think  
11 the only other thing I wanted to identify from what Lehman  
12 said is they spoke today at oral argument. They also spoke  
13 in some depth about the "admission" of U.S. Bank at oral  
14 argument.

15 THE COURT: Yeah. So let's talk about that.

16 MR. VOGEL: And let -- let me address it since I  
17 was counsel to U.S. Bank in that action so I -- I'm actually  
18 the person who supposedly made that admission.

19 THE COURT: Okay.

20 MR. VOGEL: And I would ask if Your Honor were to  
21 read the transcript there I think I was actually very clear  
22 as to what I was saying, which is that the principal part of  
23 U.S. Bank's claim against GreenPoint, those reps and  
24 warranties are indeed canceled as to Lehman because they are  
25 overlapping.

1           So to that extent they are -- Lehman is correct as  
2 it characterizes --

3           THE COURT: Talking about the -- right, as opposed  
4 to the -- what I -- the gap reps.

5           MR. VOGEL: Yes. However, gap reps isn't the  
6 totality of it. That's what's significant. Gap refers to  
7 the period of time between when --

8           THE COURT: Yeah.

9           MR. VOGEL: -- the loans go from GreenPoint to  
10 Lehman. However, there's another category of reps which are  
11 specifically and expressly non-cancelable reps, and this is  
12 in the transcript. You'll see this in the summary judgment  
13 argument. Those non-cancelable reps, which are the  
14 minority, but are still -- because we're talking about such  
15 dollars still substantial --

16           THE COURT: Right.

17           MR. VOGEL: -- those are ones as to which both  
18 Lehman and GreenPoint are liable. I think U.S. counsel may  
19 address this as well. But that's the basic point.

20           And then I would simply add that --

21           THE COURT: So you're -- the state -- so what  
22 you're saying is that your statement was limited to what I  
23 think of as the wish go down to laying reps, just the reps  
24 that were -- the reps that were repeated, but that -- but  
25 that weren't taken on.

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1 MR. VOGEL: Well, I --

2 THE COURT: Just --

3 MR. VOGEL: -- I would say that --

4 THE COURT: The first category of reps that you  
5 described to me --

6 MR. VOGEL: I think in the --

7 THE COURT: -- right?

8 MR. VOGEL: -- statement I very clearly delineated  
9 that there were some involved --

10 THE COURT: Okay.

11 MR. VOGEL: -- and I think I said, or least  
12 intended to say and I would say to you the majority of them  
13 are canceled and Lehman is correct. But a substantial  
14 minority is in the --

15 MR. VOGEL: All right. So there's three buckets.  
16 There's what you call the canceled reps. There's the gap  
17 reps, and then there's the non-cancelable reps.

18 MR. VOGEL: Correct. And then --

19 THE COURT: Okay.

20 MR. VOGEL: And then just to tab -- tab another  
21 bucket, and since we've been talking about it here today  
22 it's not a surprise, an overarching rep is that the remedies  
23 were transferred into the trust. Lehman -- Lehman said this  
24 deal was going to work and GreenPoint now claims it didn't  
25 work. And that obviously is something that it would have an

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1 overarching securitization-wide liability to Syncora and  
2 U.S. Bank for.

3 THE COURT: Okay.

4 MR. VOGEL: Thank you, Your Honor.

5 THE COURT: All right. Thank you.

6 MS. BOLAND: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MS. BOLAND: Connie Boland on behalf of U.S. Bank  
9 as indenture trustee. And I was remiss, Your Honor. I  
10 neglected to mention that Frank Top from Chapman & Cutler is  
11 also in the courtroom on behalf of U.S. Bank as indenture  
12 trustee.

13 So the indenture trustee joins in the arguments  
14 made by GreenPoint with respect to the lack of jurisdiction  
15 of this Court and the commodity and federalism arguments,  
16 and it joins in the arguments articulated by Syncora this  
17 morning.

18 What I would like to emphasize to Your Honor --

19 THE COURT: I don't know if I agree that I lack  
20 jurisdiction, but I'm not going to argue with you about it.

21 MS. BOLAND: I -- I didn't think that you would  
22 agree with me on that point, Your Honor.

23 THE COURT: Whether or not I -- I should exercise  
24 discretion to do something is different from whether or not  
25 I have jurisdiction. So --

1 MS. BOLAND: And --

2 THE COURT: -- we can just -- but we can move that  
3 past that.

4 MS. BOLAND: We can, Your Honor. And I think that  
5 some of the reasons why Your Honor should not exercise your  
6 discretion to stay the State Court action because of the  
7 irreparable harm to the indenture trustee.

8 The indenture trustee should have the right to  
9 pursue its prosecution of the State Court claim in the venue  
10 of its choice as it sees fit. This is a state law issue  
11 before a State Court. It's a breach of contract action, and  
12 it's between two non-debtors. It has, you know, nothing to  
13 do with -- and everything to do with the indenture trustee's  
14 right to secure its bargained for remedy.

15 The harm that Lehman claims is speculative at  
16 best. It says that without a stay it's not going to be able  
17 to distribute assets. Well, with a stay, as Your Honor  
18 noted earlier this morning, it's not necessarily going to  
19 result in the more expeditious distribution --

20 THE COURT: Well --

21 MS. BOLAND: -- of assets.

22 MR. VOGEL: -- so let's talk about that. So I  
23 asked counsel for Syncora how much their claim is. Let me  
24 ask you, how much is your claim?

25 MS. BOLAND: Well, Your Honor, let's get back to

1 the issue of the canceled and non-canceled reps.

2 THE COURT: Sure.

3 MS. BOLAND: The non-canceled reps and the gap  
4 reps need to be valued and Your Honor has jurisdiction over  
5 it. I do not have the information to value that -- those  
6 pieces of the -- of the reps.

7 THE COURT: Are you -- am I -- are -- is the state  
8 reserving money for your claim in an amount that either  
9 overlaps in whole or in part with amounts that you've  
10 already received from Syncora?

11 MS. BOLAND: No, Your Honor. I don't believe that  
12 it is.

13 THE COURT: An amount that's --

14 MS. BOLAND: I know that there is a reserve --

15 THE COURT: An amount that's duplicative of what  
16 has been reserved for Syncora because surely -- surely a  
17 double reserve is not something that is appropriate, right?

18 MS. BOLAND: A double reserve -- a double -- well,  
19 a double award is not appropriate and I'm not advocating --

20 THE COURT: Why is a double reserve --

21 MS. BOLAND: -- here today --

22 THE COURT: -- appropriate?

23 MS. BOLAND: I'm not saying it is, Your Honor.

24 But I -- what I am saying is that at this juncture we just  
25 have to take into consideration the distinctions between

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1 Syncora's claim and the indenture trustee's claim. I mean,  
2 the indenture trustee is here representing the noteholders  
3 and the insurers, and that's an S plural. There is another  
4 insurer, CIFG, that is represented only by the indenture  
5 trustee through the trust. And there are noteholders that  
6 are not represented by Syncora that are only represented by  
7 the indenture trustee through the trust.

8 And so their right --

9 THE COURT: I --

10 MS. BOLAND: -- their rights are there.

11 THE COURT: I understand that it's complicated.

12 MS. BOLAND: Yeah. It is.

13 THE COURT: Okay. Everything in this room is  
14 complicated.

15 MS. BOLAND: That's right, Your Honor.

16 THE COURT: Okay. If that were the test, I  
17 wouldn't get out of bed in the morning. Okay. So it's  
18 complicated. I get that. But that doesn't mean that the  
19 plan administrator has to sit still for years and years and  
20 years until it all gets sorted out.

21 So if you're going to tell me that I really  
22 shouldn't mess with what's going on in the State Court while  
23 this very complicated thing gets sorted out, you have to  
24 also tell me what you're willing to do to advance the ball  
25 here.

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1 MS. BOLAND: Well, Your Honor, I mean, we -- our  
2 proof of claim is before the Court and the proof of claim is  
3 within your jurisdiction. And the reps -- our claim for  
4 breach of reps and warranties is before the Court. We've  
5 objected to, you know, estimating it or valuing it at this  
6 point. But we can deal with it. I mean, it's pending here.

7 I am not -- I do not have information as to answer  
8 your question directly as to what the value of the indenture  
9 trustee's claims are for this particular trust. There are  
10 numerous trusts as Your Honor know -- knows in which U.S.  
11 Bank is the trustee. So I don't know whether all of those  
12 details have been ferreted out yet in this very large  
13 estate.

14 THE COURT: You know, I find that a little hard to  
15 believe. You know, I just find it hard to believe that  
16 given the stakes here and the complexity that there isn't --  
17 that that isn't known. Whether you know it standing here  
18 today, I'm not going -- this is not an ambush.

19 MS. BOLAND: Okay. Well --

20 THE COURT: That --

21 MS. BOLAND: -- I honestly don't, Your Honor. So  
22 I'm --

23 THE COURT: That's fine.

24 MS. BOLAND: -- sorry I can't answer your  
25 question.

1                 THE COURT: That's fine. I don't like to ask  
2 unfair questions. But I do believe that there's probably  
3 substantial learning that could be accessed so that we could  
4 better sort out the relationship and the amounts and deal  
5 with that.

6                 MS. BOLAND: Well, I mean, I -- other issues that  
7 should be considered into the mix, Your Honor, is that I  
8 just want to emphasize as we emphasize in the papers, that  
9 Lehman did delay; that Lehman has known about this  
10 GreenPoint State Court litigation for almost six years and  
11 not once did they make any move to intervene or stay. And,  
12 indeed, the indenture trustee was completely taken by  
13 surprise when it was served with these papers.

14                 And we believe that Your Honor should decline to  
15 exercise your discretion because the case in the State Court  
16 is sub judice.

17                 If Your Honor has no other questions I'll rest on  
18 the papers.

19                 THE COURT: Thank you very much.

20                 MR. COSENZA: May I just make a few points --

21                 THE COURT: Of course.

22                 MR. COSENZA: -- real quick?

23                 Your Honor sort of highlighted one issue that's of  
24 concern to the plan administrator. There is a \$600 million  
25 reserve that's set up for the Syncora claim. But --

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1 THE COURT: For only the Syncora claim?

2 MR. COSENZA: Yes. And then in addition --

3 THE COURT: Okay.

4 MR. COSENZA: -- Your Honor, there's the \$5  
5 billion in reserve that's set up for all of the U.S. Bank  
6 claims --

7 THE COURT: Right.

8 MR. COSENZA: -- as trustee.

9 THE COURT: Right.

10 MR. COSENZA: So, in essence, there are --

11 THE COURT: Right. So there's 5 billion --

12 MR. COSENZA: -- two --

13 THE COURT: -- for U.S. Bank across --

14 MR. COSENZA: Yes.

15 THE COURT: -- lots of securitizations.

16 MR. COSENZA: Including this --

17 THE COURT: Including this --

18 MR. COSENZA: -- this trust. So you do have a  
19 double reserve issue that needs to be sorted out pretty  
20 promptly from the plan administrator's perspective.

21 Your Honor, I also wanted to touch very quickly,  
22 I'm not an expert on synthetic commutations and what was  
23 done with Syncora. My colleague, Tom French, is an expert

24 --

25 THE COURT: Okay.

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1 MR. COSENZA: -- on that area, so he may want to  
2 come up here and correct me if I sort of take a misstep  
3 here.

4 THE COURT: Okay.

5 MR. COSENZA: But we have heard that Syncora paid  
6 X dollars into the trust and that the trust then pays that  
7 out on a waterfall. We think through the mitigation efforts  
8 referred to in the papers and discussed today that there's a  
9 substantial amount that's round-tripped that, you know, goes  
10 into the trust and then gets paid out to Syncora. So  
11 there's some level of double recovery here. And we're just  
12 having a tough time understanding --

13 THE COURT: Sure.

14 MR. COSENZA: -- what the exact number is that is  
15 actually being --

16 THE COURT: Right. So that doesn't --

17 MR. COSENZA: -- incurred.

18 THE COURT: -- that -- that's something that --  
19 and we're all kind of a little bit unprepared for this and  
20 that's my fault because you couldn't have known I was going  
21 to talk about this. But -- so that would be something that  
22 we would want to get to the bottom of in connection with an  
23 effort to reduce the double reserve.

24 MR. COSENZA: Correct.

25 I don't know, Tom, if you want to add anything

1 else?

2 If Tom could just talk for two minutes just to  
3 make sure I didn't --

4 THE COURT: That's fine. Just give us your  
5 appearance for the record, please.

6 MR. FRENCH: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. FRENCH: Tom French, Willkie, Farr & Gallagher  
9 on behalf of the estate.

10 My colleague substantially correctly characterized  
11 a synthetic commutation. The principle is that an insurer  
12 such -- a commutation itself, not a synthetic one, is where  
13 an insurer goes out and pays for effectively the cancelation  
14 of a policy.

15 A synthetic commutation, in contrast, is a  
16 transaction in which an insurer goes out and buys all or a  
17 substantial portion of the underlying securities so that  
18 when it makes payments on the policies, as Todd said, the  
19 money effectively will roundtrip.

20 The estate believes that while the \$600 million  
21 past and future claims number is a gross number and the  
22 effect of the round-tripping process, we believe, is about a  
23 fraction of that number. And from our standpoint that is  
24 the starting point. We then look at the gap reps and the  
25 other issues that have been raised today. That's, you know,

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1 just the starting point from where you evaluate the claims  
2 outstanding.

3 THE COURT: So the -- let me absorb what you're  
4 saying for a minute.

5 So the use of this synthetic commutation device  
6 Lehman says reduces its exposure to Syncora --

7 MR. FRENCH: Correct.

8 THE COURT: -- correct?

9 MR. FRENCH: It -- that's right.

10 THE COURT: That -- that Lehman gets to tap the  
11 benefit of the use of that device because it's an out of  
12 pocket damages calculation that we're looking --  
13 determination that we're looking at.

14 MR. FRENCH: Yeah. I think our view is that  
15 that's actually a high water mark. But then when you look  
16 at the actual merits of the underlying claims and the gap  
17 reps and everything else --

18 THE COURT: That -- right. I --

19 MR. FRENCH: But, yes. But --

20 THE COURT: That --

21 MR. FRENCH: -- that is correct.

22 THE COURT: Right.

23 MR. FRENCH: Yeah. That's correct.

24 THE COURT: Right. All right. Okay. Well, we've  
25 gone a little bit far afield from whether or not a State

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1 Court action should be stayed, but I think all of this is  
2 very, very important.

3 So I think Mr. Cosenza wants to take --

4 MR. FRENCH: Thank you.

5 THE COURT: -- another shot.

6 MR. COSENZA: Your Honor, just a couple of other  
7 wrap-up points --

8 THE COURT: Just let me say again, none of this is  
9 evidence. This is beyond what you could have reasonably  
10 anticipated we were going to talk about today. So I'm not  
11 taking this as gospel. This is just the barest and  
12 preliminary introductions to some of the complicated issues  
13 that we're going to have to face.

14 So nobody should get nervous. Nobody's clients  
15 should yell at them for not correcting what are later said  
16 to be inaccurate statements.

17 MR. COSENZA: Sure.

18 THE COURT: Okay.

19 MR. COSENZA: Your Honor, just to comment that  
20 you've made several times today which is very important to  
21 the plan administrator, and that is that any decision in New  
22 York Court is not binding on Lehman. We've heard  
23 confirmation of that from GreenPoint.

24 I would also like to make sure that --

25 THE COURT: Well, it's not -- it's just -- it's

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1 more than that. I want to put --

2 MR. COSENZA: Yeah.

3 THE COURT: -- a little bit more to the point. As  
4 a matter of plain letter black law it's not binding. But,  
5 also, I will say that to the extent that in subsequent  
6 proceedings, for example, on reducing the reserves or  
7 anything I'm really not going to be interested in hearing  
8 about what happened in the State Court proceeding as  
9 something that should put the thumb on the scale for  
10 anybody's benefit. I mean, that's -- that's kind of the  
11 quid pro quo part of -- not a quid pro quo, but part of what  
12 I'm trying to communicate is I'm not going to be very open  
13 to an argument that says, but in the State Court X, Y or Z,  
14 whatever it is.

15 These claims are here. I'm going to decide them.  
16 And the reserve is here established by an order of this  
17 Court if it's going to be modified. I'm going to -- I'm  
18 going to decide it based on predicate facts, not on  
19 something that happened somewhere else.

20 Obviously, I do answer to, you know, the Second  
21 Circuit --

22 MR. COSENZA: Yes.

23 THE COURT: -- and the Supreme Court to name a  
24 few, but -- so I -- so, yes. I agree with your point.

25 MR. COSENZA: Just a couple of other -- just give

1 me two more minutes --

2 THE COURT: Sure.

3 MR. COSENZA: -- Your Honor, and I'll be done.

4 We heard several times from -- I think I counted  
5 six different major questions that will not be addressed in  
6 the New York Court proceedings that will -- that need to be  
7 addressed in the Bankruptcy Court. We heard that from  
8 GreenPoint's counsel.

9 I think that almost supports our point as the plan  
10 administrator that this is the only forum that actually can  
11 hear a lot of these complicated issues. The New York action  
12 in some ways is subsumed within this much broader action  
13 that's in the Bankruptcy Court.

14 So we think just from a judicial efficiency  
15 perspective it makes a lot of sense to stay the New York  
16 action and to go forward here.

17 THE COURT: Whose efficiency are you worried  
18 about?

19 (Laughter)

20 THE COURT: I mean, I'm going to have to do it.

21 MR. COSENZA: Yes. You're going to have to do it.

22 THE COURT: I'm going to have to do it one way --

23 MR. COSENZA: Yes.

24 THE COURT: -- one way or the other. So --

25 MR. COSENZA: And, Your Honor, just to the point

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1 that you raised earlier, we've raised in our complaint a  
2 number of the tools that you've raised that you have at your  
3 disposal.

4 First, we've asked Your Honor to disallow the  
5 Syncora and U.S. Bank claims. We've asked you to estimate  
6 the claims for reserve purposes. We've asked you to put the  
7 claims for U.S. Bank through the RMBS protocol. We've asked  
8 you to determine that the assignment here or the standing  
9 issue that's been discussed is, you know, whatever the  
10 proper, you know, --

11 THE COURT: Right.

12 MR. COSENZA: -- declaration is on that issue. So  
13 we've asked for those, you know, various counts of our  
14 complaint. We've asked Your Honor to assist us with that.  
15 We really don't have an ax to grind here. We just need to  
16 get this done as quickly as possible. And as I mentioned  
17 before, there are various different permutations in how  
18 different legal decisions or determinations will impact the  
19 estate. And as the plan administrator we just need to get  
20 this moving very quickly in that regard.

21 THE COURT: So does it makes sense for me to  
22 direct essentially a meet and confer where the parties  
23 attempt to agree to a scheduling --

24 MR. COSENZA: Yeah. And I think --

25 THE COURT: -- order with respect to all the

1 above?

2 MR. COSENZA: Correct.

3 THE COURT: And then to the extent that you  
4 succeed or don't succeed, that I pen -- I take this under  
5 advisement; that you folks have those conversations. You  
6 come back. You let me know to what extent you have an  
7 agreement. The plan administrator tells me to what extent  
8 it wishes to continue to ask me to stay the State Court  
9 litigation and we -- and we go from there.

10 MR. COSENZA: Yeah. And --

11 THE COURT: Does that make sense --

12 MR. COSENZA: Yes.

13 THE COURT: -- as a game plan?

14 MR. COSENZA: And let me just confer with my  
15 client, but I do think there's two other -- two things --  
16 two issues that I want to highlight which I've mentioned  
17 several times. I think the reserve issue needs to be teed  
18 up and that should be one of the threshold, you know, next  
19 issues to be --

20 THE COURT: Right.

21 MR. COSENZA: -- teed up. And second is --

22 THE COURT: But, I mean, I have a --

23 MR. COSENZA: -- the assignment --

24 THE COURT: -- I have a good memory --

25 MR. COSENZA: Yeah.

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1                   THE COURT: -- right, so if the folks at this  
2 table, when you try to tee something up, tell me ten reasons  
3 why it can't go forward, you know, I will remember this day.  
4 So, you know, things are going to have to move.

5                   MR. COSENZA: If I can just caucus my client for  
6 one --

7                   THE COURT: Sure.

8                   MR. COSENZA: -- minute and --

9                   THE COURT: We can take a break if you would like.  
10 Would you like to take a break or --

11                  MR. COSENZA: Yeah. Sure. We'll take a five-  
12 minute break --

13                  THE COURT: Okay.

14                  MR. COSENZA: -- Your Honor.

15                  THE COURT: So we've been going for quite a while.  
16 So why don't we come back at -- and maybe you folks could  
17 talk to each other as well. Why don't we come back at ten  
18 minutes after the hour --

19                  MR. COSENZA: Great.

20                  THE COURT: -- and we can finish up then?

21                  MR. COSENZA: Thank you. Your Honor.

22                  THE COURT: All right.

23                  (Recess taken at 9:53 a.m.; resume at 10:14 a.m.)

24                  THE COURT: Be seated.

25                  Okay.

1 MR. COSENZA: Your Honor, may I approach?

2 THE COURT: Sure.

3 MR. COSENZA: So I think we have, from our  
4 perspective, from the plan administrator's perspective the  
5 two issues we want to tee up promptly.

6 THE COURT: Okay.

7 MR. COSENZA: One is the issue that's been briefed  
8 before in New York Supreme Court on, you know, the  
9 assignment and standing issue. From our perspective we  
10 think that everything could be fully submitted to Your Honor  
11 within -- probably by the middle of August.

12 THE COURT: Okay.

13 MR. COSENZA: We think that --

14 THE COURT: And that -- with the idea being that I  
15 work for the rest of August on it?

16 MR. COSENZA: Well, whatever, you know, it's all  
17 subject to Your Honor's schedule. But I think from our  
18 perspective we would like to get an opportunity to look at  
19 the underlying record. We think the record is complete.  
20 I'm not sure if Lehman will put in an additional submission.

21 But I understand from Syncora and U.S. Bank's  
22 counsel that some of the materials are redacted, so there  
23 may be an issue we need to work out --

24 THE COURT: That have --

25 MR. COSENZA: -- and see if Your Honor is --

1 THE COURT: -- been filed in redacted form in the  
2 State Court?

3 MR. COSENZA: Correct. Correct. So we'll need to  
4 ask -- maybe submit an order to Your Honor so we can gain  
5 access to that.

6 THE COURT: Okay. That sounds like an easy one.

7 MR. COSENZA: But beyond that I think everything  
8 is fully submitted there and I think, you know, maybe even  
9 ready for Your Honor even before that we get the materials  
10 quickly.

11 THE COURT: Okay.

12 MR. COSENZA: The second --

13 THE COURT: Does this reflect your folks' view or  
14 have you spoken to --

15 MR. COSENZA: I have spoken --

16 THE COURT: -- these folks as well?

17 MR. COSENZA: I mean, U.S. Bank and Syncora's  
18 counsel can correct me. I think they're on board with this.  
19 GreenPoint said they needed to check with their client. So  
20 that -- we can hear from them if --

21 THE COURT: Okay.

22 MR. COSENZA: -- they have a different view.

23 THE COURT: All right.

24 MR. COSENZA: And Syncora and U.S. Bank can  
25 correct me if I've misstated anything.

1 THE COURT: Okay.

2 MR. COSENZA: The second issue is the reserve  
3 issue. We're going to make a motion to lower the Syncora  
4 reserve. We think, as we told you before, it's inflated by  
5 several hundred million dollars. And we're going to need  
6 some accounting from Syncora, so we're going to try to move  
7 that --

8 THE COURT: So there's going to be some --

9 MR. COSENZA: -- forward.

10 THE COURT: -- discovery so to speak that will be  
11 --

12 MR. COSENZA: Yeah. And I think we need some form  
13 of an accounting of some sort to figure out what exactly the  
14 losses are, what --

15 THE COURT: Along the lines of --

16 MR. COSENZA: -- they're out of pocket --

17 THE COURT: -- the questions that I was asking  
18 earlier.

19 MR. COSENZA: Correct. And we need that for both  
20 us and maybe for the Court as well to understand what the  
21 claim is worth. So we'll move that forward as quickly as we  
22 can --

23 THE COURT: Okay.

24 MR. COSENZA: -- and hopefully have that fully  
25 briefed maybe by the end of August. We'll --

1 THE COURT: Okay.

2 MR. COSENZA: -- try to work out a briefing  
3 schedule and start also communicating with Syncora's counsel  
4 to see if we can get some of this information and do what we  
5 can to try to resolve these even consensually.

6 THE COURT: Okay. And in the meantime I will  
7 carry the motion.

8 MR. COSENZA: Correct.

9 THE COURT: Okay. And are you going to reduce  
10 this to some sort of a writing or shall I so order the  
11 record? What did you have in mind?

12 MR. COSENZA: I think from our perspective so  
13 ordering the record and then we'll confer with counsel on  
14 the briefing schedule for the two separate issues. I think  
15 I just would treat them as two separate sort of briefing  
16 schedules.

17 THE COURT: Okay. I think that -- I don't know  
18 that there's anything really in the record that I can so  
19 order. I think that what you ought to do is allow folks to  
20 make sure that their clients are signed off and that you  
21 have all the details straight, and then I'm indifferent as  
22 to whether or not it's a stipulation or you sent me a joint  
23 letter telling me --

24 MR. COSENZA: Okay.

25 THE COURT: -- what the schedule is. Whatever is

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1 most efficient for you, just as long as it's clear so --

2 MR. COSENZA: Yes.

3 THE COURT: -- so that there's clarity.

4 MR. COSENZA: No. That makes sense from our  
5 perspective and I think we've laid sort of the general  
6 framework of what we think.

7 THE COURT: Sure. Okay.

8 MR. COSENZA: So thank you, Your Honor.

9 THE COURT: All right. Okay.

10 MR. BURKE: Your Honor, Kevin Burke for GreenPoint  
11 again.

12 We -- we don't agree with the idea of just marking  
13 this and carrying this motion forward. The State Court  
14 judge has been advised by the parties of the existence of  
15 this motion --

16 THE COURT: Okay. Well, I am taking the motion  
17 under advisement. So you can advise the State Court judge  
18 that I have the motion under advisement.

19 MR. BURKE: Okay.

20 THE COURT: It doesn't affect -- I'm not entering  
21 a stay. I'm offering no view whatsoever. Nothing that I've  
22 said or done here today or am going to do going forward is  
23 or should be seen as an impediment in any way to anything  
24 that folks are pursuing in the State Court. So it's the --  
25 it's -- I think people get used to my delivering decisions

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1 from the bench, but sometimes when matters are larger and  
2 more complicated I take them under advisement, and that's  
3 essentially what I'm doing today.

4 MR. BURKE: Thank you, Your Honor.

5 THE COURT: All right. Yes.

6 MR. VOGEL: Very briefly, Your Honor.

7 THE COURT: Sure.

8 MR. VOGEL: Syncora is in agreement as I  
9 understand U.S. Bank is with what Lehman's counsel said  
10 regarding the prompt submission of the standing issue to  
11 Your Honor subject to resolving the issues concerning  
12 confidentiality. And I only wanted to say with respect to  
13 the reserve which we understand they're going to be bringing  
14 a motion on, that we hadn't talked to them about a time  
15 frame. And that would be something --

16 THE COURT: Sure.

17 MR. VOGEL: -- to discuss.

18 THE COURT: We're not going to -- you know, moving  
19 expeditiously is not equal to cutting corners or cutting off  
20 people's rights to due process and adequate time to respond  
21 and all of that. So that's why I said rather than so  
22 ordering anything, you're going to work out a schedule. It  
23 is the summertime and people have vacations and commitments  
24 and, you know, those shouldn't be run rough shot over for  
25 the sake of meeting, you know, a particular deadline.

1                   MR. VOGEL: Very good, Your Honor. That was the  
2 point I wanted to make.

3                   THE COURT: Okay.

4                   MR. VOGEL: Thank you.

5                   THE COURT: All right. Okay. Hold on one  
6 second.

7                   (Pause)

8                   MR. BURKE: I do have one housekeeping matter  
9 after we get --

10                  THE COURT: Sure.

11                  MR. BURKE: -- to this.

12                  (Pause)

13                  MR. COSENZA: Your Honor, one last item. I  
14 touched this before, but maybe we can ask for -- make a more  
15 formal request.

16                  The material in the State Court proceeding, we  
17 understand from my co-counsel, is redacted and we want to  
18 figure out some way of making sure we gain access to --

19                  THE COURT: Right.

20                  MR. COSENZA: -- the materials and --

21                  THE COURT: I mean, you've already raised that so  
22 I think you're going to work that out. I don't think that  
23 anybody's going to take the position that you have to flag  
24 line with respect to what's in the documents; that they will  
25 -- there's going to have to be appropriate agreements,

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1 sealing orders, et cetera. I mean, my concept is not  
2 exactly that you're going to take lock, stock and barrel of  
3 the entire State Court record and just kind of deliver it to  
4 my front door. I mean, maybe you'll do that. But certainly  
5 look at it with fresh eyes I would say.

6 MR. COSENZA: Okay.

7 THE COURT: I mean --

8 MR. COSENZA: Thank --

9 THE COURT: -- if it ends up being that, then it  
10 is --

11 MR. COSENZA: Sure.

12 THE COURT: -- what it is.

13 MR. COSENZA: Okay. Thank you, Your Honor.

14 THE COURT: Is there something I'm missing?

15 MR. COSENZA: Yeah. We may need a court order at  
16 some point.

17 THE COURT: Of course. Yeah. Someone -- and I  
18 can't remember who -- someone already said that.

19 MR. COSENZA: I --

20 THE COURT: So you'll have to make a sealing  
21 motion --

22 MR. COSENZA: Yes.

23 THE COURT: -- that complies with all the usual  
24 rules and to the --

25 MR. COSENZA: Absolutely.

1                   THE COURT: -- extent that everybody's in  
2 agreement on that, that makes it that much easier. But,  
3 yes. I --

4                   MR. COSENZA: Okay.

5                   THE COURT: I agree with you.

6                   Just based on the timing that folks are talking  
7 about today, it doesn't seem likely that you're going to ask  
8 for a hearing date at the end of August. I'm generally not  
9 inclined to give out hearing dates at the end of August. So  
10 then we'll be into September and --

11                  MR. COSENZA: Absolutely.

12                  THE COURT: -- you know, it's always -- and then  
13 we get into various religious holidays and whatnot.

14                  MR. COSENZA: Uh-huh.

15                  THE COURT: But we'll move it forward.

16                  MR. COSENZA: We will coordinate with you and --

17                  THE COURT: But no one should anticipate that  
18 you're going to have hearing dates at the end of August.

19                  MR. COSENZA: Okay.

20                  THE COURT: Okay. Any last licks? Anyone else?

21                  MR. COSENZA: That's all. Thank you, Your Honor.

22                  MR. BURKE: Unrelated, but a housekeeping matter.

23                  THE COURT: Okay.

24                  MR. BURKE: Actually, two housekeeping matters.

25                  One is that the defendants in this -- in the

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1 adversary have not yet seen the full complaint because there  
2 were redactions in it and I believe an order has been  
3 submitted to Your Honor --

4 THE COURT: Right.

5 MR. BURKE: -- on the sealing --

6 THE COURT: So we had a sealing -- we had a  
7 sealing motion with respect to the complaint that was on  
8 today. We will enter that. I need to take another look at  
9 it. And now that we're -- just give me a moment to think  
10 out loud.

11 Now that we are embarked on this additional path,  
12 perhaps you folks can take a look at that sealing order and  
13 maybe we could have -- kill two birds with one stone and  
14 bake into that sealing order -- it may not work. That may  
15 be more cumbersome than it's worth. But, sure, you get to  
16 see everything, and just let us know when you take another  
17 look at the sealing order whether you want to amend it or --  
18 to complete this new additional path or whether we should do  
19 those things separately.

20 I can see you trying to think -- trying to keep up  
21 with me here, Mr. Cosenza. You don't know what the answer  
22 is. I don't know what the right answer is either. It may  
23 be simplest just for me to enter the sealing order so that  
24 that enables these folks to -- for you to file the redacted  
25 version and that they then get a copy of the unredacted.

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1                   MR. COSENZA: Your Honor, we'll take a quick look  
2 at this and see if there's some way of combining it and it  
3 may be --

4                   THE COURT: Okay.

5                   MR. COSENZA: -- for efficiency purposes --

6                   THE COURT: I'm not trying to make it more  
7 complicated, just less. But they need to be able to see  
8 what they need to see. Okay.

9                   MR. BURKE: Second housekeeping matter, Your  
10 Honor, there's a initial pretrial conference scheduled in  
11 this adversary for the 22nd at 10 a.m. I personally have to  
12 be before Judge Glenn at that exact time on that exact day  
13 and I would like to, if it's possible, to move that.

14                  THE COURT: So are we going to continue to do that  
15 in light of what we've talked about here today?

16                  MR. COSENZA: Your Honor, I think it would depend  
17 on how things play out over the next week or so with --

18                  THE COURT: Okay. Well, certainly we shouldn't --  
19 we shouldn't force counsel to have to tell Judge Glenn that  
20 he can't be there because --

21                  (Laughter)

22                  THE COURT: -- Judge Glenn will be unhappy with  
23 me.

24                  MR. COSENZA: Our hopes are that that conference  
25 may not be necessary, but --

1 THE COURT: Right.

2 MR. COSENZA: -- it really depends on how things  
3 play out in terms of reaching the scheduling on --

4 THE COURT: Okay.

5 MR. COSENZA: -- the two issues we phrased.

6 THE COURT: So how should we -- but how should we  
7 leave that?

8 MR. COSENZA: We can just -- is there a different  
9 day in July that -- late July that works for Your Honor?

10 (Pause)

11 THE COURT: Yeah. That day is a whole Lehman day,  
12 so I -- depending on how long you're going to be before  
13 Judge Glenn.

14 MR. BURKE: I would hope to be done by noon.

15 THE COURT: Okay. Then we could just -- we could  
16 just push it back to noon to the extent that the parties  
17 believe that it's still something that we should do because  
18 that is a Lehman omni day. All right.

19 MR. COSENZA: That makes sense.

20 THE COURT: Okay. All right. Thank you very  
21 much.

22 MR. COSENZA: Thank you.

23 THE COURT: We'll be back at 11:00 for the  
24 remainder of the Lehman calendar.

25 (Recess taken at 10:25 a.m.; resume at 11:03 a.m.)

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1 THE COURT: Good morning. How are you?

2 MR. WOOLVERTON: Good morning, Your Honor. I'm  
3 well. Thank you.

4 For the record Alexander Woolverton with Weil,  
5 Gotshal & Manges on behalf of the plan administrator.

6 Your Honor, this is a continuation of this  
7 morning's calendar in Lehman Brothers Holdings, Inc., and as  
8 the agenda reflects there are two items remaining for this  
9 morning.

10 THE COURT: Okay.

11 MR. WOOLVERTON: The second item on the agenda,  
12 Your Honor, is the motion pursuant to Rule 9019 of the  
13 Federal Rules of Bankruptcy Procedure and Section 105(a) of  
14 the Bankruptcy Code seeking approval of the settlement  
15 agreement related to the Airlie LCDO (Aviv LCDO 2006-3)  
16 credit default swap agreement and indenture. That appears  
17 at Docket Entry 49703.

18 The Court has been provided a copy of the  
19 confidential settlement agreement and the plan administrator  
20 has filed the declaration of Lawrence Brandman (ph) in  
21 support of the proposed settlement agreement, and that can  
22 be found at Docket Entry 49996. Due to a scheduling  
23 conflict, Your Honor, Mr. Brandman could not be present in  
24 court today.

25 Finally, Your Honor, U.S. Bank as trustee has

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1 filed a declaration on June 15, 2015 in connection with the  
2 proposed settlement agreement and that can be found at  
3 Docket Entry 49989. And counsel for U.S. Bank is present in  
4 court today.

5 THE COURT: Okay.

6 MR. WOOLVERTON: The motion was filed on May 20th,  
7 year 2015, and the objection deadline was established as  
8 June 11th, 2015. That deadline has, of course, passed and  
9 there have been no objections filed.

10 As stated in the motion the proposed settlement  
11 agreement provides for the resolution of yet another SPV  
12 flip clause dispute. Beginning in 2010 the parties were  
13 engaged in an ADR process and this process ultimately  
14 resulted in the execution of a termination agreement in  
15 respect of the transaction at issue.

16 As a result the collateral was liquidated and U.S.  
17 Bank, as trustee, holds approximately \$841,000 for the  
18 benefit of the holders of the so-called remaining notes.

19 This proposed settlement agreement, Your Honor,  
20 provides for full resolution of the dispute as to the  
21 balance of those funds. Additionally, the proposed  
22 settlement agreement provides for the dismissal of Airlie as  
23 well as the co-issuer under the notes and U.S. Bank, both  
24 individually and as trustee from the adversary proceeding  
25 Number 10-03542 commenced in connection with this

1 transaction.

2 Your Honor, the relief sought by the parties is  
3 unopposed. Additionally, as supported by the declaration of  
4 Mr. Brandman, the plan administrator submits the -- that the  
5 proposed settlement agreement is in the best interest of  
6 LBHI and LBSF's estates and their creditors.

7 Accordingly, unless the Court has any questions,  
8 the plan administrator respectfully request that the motion  
9 be granted and the settlement agreement be approved.

10 THE COURT: All right. Thank you very much.

11 Does anyone wish to be heard?

12 MR. TOP: Your Honor, Frank Top --

13 THE COURT: Yes.

14 MR. TOP: -- from Chapman & Cutler on behalf of  
15 U.S. Bank.

16 THE COURT: How are you?

17 MR. TOP: I'm doing very well.

18 We received no objections from any noteholders in  
19 connection --

20 THE COURT: Okay.

21 MR. TOP: -- with this matter, and you'll be very  
22 happy to know that the number of transactions in which U.S.  
23 Bank is involved in in the non-distributed fund adversary is  
24 dwindling.

25 (Laughter)

1           THE COURT: Good news -- good news for all  
2 concerned.

3           MR. TOP: That is true. Thank you --

4           THE COURT: Very good.

5           MR. TOP: -- Your Honor.

6           THE COURT: Thank you.

7           All right. With that I'm happy to approve the  
8 settlement. It clearly is in the best interest of the  
9 estate and complies with the relevant standards under Rule  
10 9019 of the Bankruptcy Rules, and we will entertain an order  
11 and enter it later today.

12          All right. Next.

13          MR. FAIL: Thank you, Your Honor. Good morning.

14          For the record, Garrett Fail, Weil, Gotshal & Manges for the  
15 plan administrator.

16          The next item on the agenda is a motion for  
17 extension of the period to file objections to and request to  
18 estimate claims.

19          The Court entered an order yesterday granting the  
20 motion as to all of the more than 2,300 disputed claims for  
21 which no objection was filed. The plan administrator  
22 requests that the Court grant the motion with respect to the  
23 claim of Highlands CDO Opportunity Master Fund, L.P. today.

24          Causes exists to extend the objection deadline.

25          As described at the status conference earlier this month,

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1 tremendous progress has been made in the claims process and  
2 significant work remains to be done. Court approved  
3 procedures granting discretion to the plan administrator  
4 have fostered this success and efficiency of the progress to  
5 date.

6                 Earlier this month the plan administrator filed a  
7 motion to estimate Highland's claim and 1,147 others at zero  
8 for reserve and distribution purposes. If Highland objects  
9 to that motion, entry of a final order determining that  
10 motion with respect to Highland's claim in particular may  
11 not be -- may not occur prior to the expiration of the  
12 current objection deadline.

13                 It's premature today to predict whether any  
14 further action with respect to Highland's claim will be  
15 required, but there is no basis to distinguish the objection  
16 period for Highland's claim from the period for other  
17 claims. Limiting the objection period for any claim would  
18 only force the plan administrator to choose between  
19 incurring unnecessary expenses and allowing meritless or  
20 inflated claims.

21                 The plan administrator requests that the Court  
22 overrule Highland's objection and grant the motion. Ms.  
23 Volkov is present on behalf of Highlands and I'll yield the  
24 podium to her --

25                 THE COURT: Okay.

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1 MR. FAIL: -- unless Your Honor has any questions.

2 THE COURT: All right. That's fine. Thank you.

3 MR. FAIL: Thank you.

4 MS. VOLKOV: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MS. VOLKOV: Ilana Volkov, Cole Schotz on behalf  
7 of Highland CDO Opportunity Master Fund. It's a pleasure to  
8 appear for the first time before Your Honor.

9 THE COURT: Welcome.

10 MS. VOLKOV: Thank you.

11 So, Your Honor, several facts are undisputed.

12 THE COURT: Well, wait. Let's start --

13 MS. VOLKOV: Sure.

14 THE COURT: -- let's start very specifically  
15 because a number of things happened, I believe, after you  
16 filed your opposition. And one of the main themes of your  
17 opposition this time around and indeed before was lack of  
18 transparency, lack of movement, and the like.

19 So now you know. So the plan administrator wasn't  
20 delaying for the cause of delay. There was a logic to the  
21 path that they were pursuing. So now you have the benefit  
22 of that and I -- I cannot understand what it is that you  
23 think ought to happen next.

24 MS. VOLKOV: Sure.

25 THE COURT: And it is worth pointing out. Your

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1 client -- you're the only objector. Everybody else gets it  
2 and is satisfied that the plan administrator, in good faith,  
3 is proceeding in a logical and indeed expeditious fashion.

4 So I -- I just -- I don't understand why now with  
5 the plan administrator having filed the motion to estimate  
6 the claims, why there remains anything to talk about.

7 MS. VOLKOV: Well, actually Your Honor raises a  
8 very good point because we actually believe that the motion  
9 is now moot. Now that the plan administrator has declared a  
10 process, the process being a claims estimation process, and  
11 that motion was filed within the deadline that Judge Peck  
12 set, we actually believe that the motion is moot.

13 THE COURT: Well, but we're not -- we're not  
14 wholly connecting them because, first of all, if you want to  
15 consent to the estimation at zero, I'm sure the plan  
16 administrator will be delighted and we could call it a day.  
17 But I don't think that's what you're here to tell me.

18 MS. VOLKOV: No.

19 THE COURT: Okay. So to the extent that you're  
20 not going to agree to that or that there's not a disposition  
21 consistent with what the plan administrator's requesting,  
22 then the plan administrator has and is seeking, I believe,  
23 to retain its rights to object to the claim on other  
24 grounds.

25 MS. VOLKOV: Correct. And that's --

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1                   THE COURT: And then simply order in logically the  
2 order in which it pursues those. So it doesn't make sense  
3 now for the plan administrator to hypothetically, if you  
4 will, object to the Highland claim on those other grounds  
5 because depending upon what happens in the estimation, we  
6 may never get to it.

7                   So I -- I just -- I'm at a loss to understand what  
8 you're telling me.

9                   MS. VOLKOV: Okay.

10                  THE COURT: I mean, it can't be -- I'm not going  
11 to deprive the plan administrator of a potential further  
12 substantive ground to object to the claim if that's the  
13 direction that it goes. I have no idea. I obviously  
14 haven't looked at the estimation motion yet. But I'm  
15 generally familiar and the general concept is that the  
16 claimants are going to get the -- the guarantee claimants  
17 are going to get paid in whole by the primary obligor,  
18 Libby, and, therefore, there's nothing left to be paid.

19                  But -- and I'm totally aware of all the law that  
20 says that you have a full claim until it's paid in full. I  
21 get all that. But I don't see the point of forcing the plan  
22 administrator before the disposition of that action to file  
23 what would be a completely hypothetical objection to  
24 Highland's claim.

25                  MS. VOLKOV: Well, Your Honor, as I said, we think

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1 that the motion is moot. Certainly, at least with respect  
2 to the relief that seeks to extend the deadline to estimate  
3 claims. The plan administrator has filed the motion to  
4 estimate claims. So that part of the relief is now moot.

5 To the extent that the administrator still wants  
6 to object to the claim, if the estimation motion is denied,  
7 which we believe is frankly, Your Honor, highly prejudicial  
8 to our client --

9 THE COURT: What's prejudicial?

10 MS. VOLKOV: -- the way -- well, the way that the  
11 administrator has the timeline, the administrator has  
12 embarked upon as well as the fact that --

13 THE COURT: I don't --

14 MS. VOLKOV: -- we could be --

15 THE COURT: I don't understand that.

16 MS. VOLKOV: Well, I'm trying to explain it.

17 THE COURT: Okay.

18 MS. VOLKOV: As well as the fact that Highlands  
19 could be litigating with the plan administrator for years  
20 and years and years to come.

21 So the plan --

22 THE COURT: Wait. Wait. Wait. Stop. Stop.  
23 Stop. I -- it sounds terrible, but it's not true. There's  
24 going to be a disposition of the estimation motion, I don't  
25 know what the time frame is --

1 MS. VOLKOV: It's in three weeks.

2 THE COURT: Okay.

3 MS. VOLKOV: Right.

4 THE COURT: Right.

5 MS. VOLKOV: Right. So --

6 THE COURT: So -- yes?

7 MS. VOLKOV: Okay. So --

8 THE COURT: Well --

9 MS. VOLKOV: -- if the -- if the estimation --

10 THE COURT: -- I --

11 MS. VOLKOV: -- motion is granted, Your Honor,  
12 let's play this out.

13 THE COURT: But I -- it might be being heard in  
14 three weeks, but that doesn't mean I'm going to decide it in  
15 three weeks.

16 MS. VOLKOV: Understood. But why -- why is the  
17 relief -- why is the relief that the plan administrator  
18 seeks to extend the deadline for entry of a final order  
19 granting the estimation motion? That's where I'm a little  
20 bit lost with respect to the relief that the plan  
21 administrator seeks because the way that the motion is  
22 presented and was presented 18 months ago was an extension  
23 of the deadline to file an estimation request. It was not  
24 an extension of the deadline to seek entry of a final and  
25 non-appealable order either granting an estimation motion or

1 allowing or disallowing a claim.

2 So I think there's perhaps a bit of a disconnect  
3 here and that's why I say, Your Honor, I think with respect  
4 to the -- at least with respect to the portion that seeks to  
5 extend the plan administrator's deadline to file an  
6 estimation motion, that motion is moot because that's  
7 exactly what the plan administrator has done.

8 THE COURT: Yeah. Well, I'll let Mr. Fail respond  
9 to that. I don't know that I agree, but he can put his  
10 words around --

11 MS. VOLKOV: Okay.

12 THE COURT: -- why I think -- I don't think that  
13 is even accurate. I fundamentally do not understand what  
14 this fight is about.

15 MS. VOLKOV: Well, the fight is about the fact  
16 that --

17 THE COURT: You want -- do you want to litigate --  
18 you want to litigate on the merits of your claim --

19 MS. VOLKOV: That's exactly what we've been asking  
20 for.

21 THE COURT: -- when I might estimate it at zero?

22 MS. VOLKOV: Well, Your Honor, we -- that motion  
23 is moot as to the estimation relief. Okay. That's the  
24 first thing.

25 The second thing, Your Honor --

1 THE COURT: They might --

2 MS. VOLKOV: Okay. But can I just -- can I just  
3 finish? The other thing that I would like to see happen is  
4 -- and this is actually a request that I had made to Mr.  
5 Fail on several occasions after the estimation motion was  
6 filed -- is the estimation motion is going to be heard in  
7 three weeks. I have no idea and Your Honor has no idea  
8 what's going to happen in three weeks. We have no idea who  
9 else is going to object besides my client.

10 But it seems prudent to me to adjourn the motion  
11 today and it's only obviously as to the Highland claim until  
12 July, I think it's 22nd, which is the return date of the  
13 estimation motion so that we have a much better picture as  
14 to exactly what Your Honor is going to rule. Your Honor may  
15 deny the motion.

16 THE COURT: I'm not going -- I'm not going to do  
17 that. I -- we're going to have the estimation motion. I'm  
18 going to do whatever it is I do either across the board or  
19 individually or in some way to categorize the claims. I  
20 have no idea because I haven't looked at it yet. If you  
21 were here for my 10:00 calendar you heard my message loud  
22 and clear that I'm going to move things along.

23 It makes no sense to proceed to litigate on the  
24 merits of what I would call second level or second tier  
25 potential objections to Highland's claim when it might may

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1 be resolved fully by the disposition of the estimation  
2 motion which will proceed expeditiously. There's no mystery  
3 around it and it doesn't cause anybody to have to waste  
4 resources litigating or even writing an objection on a piece  
5 of paper.

6 I suppose the plan administrator could satisfy  
7 your request by writing -- by putting the word objection on  
8 a piece of paper and writing the words that to the extent  
9 that the motion to estimate the Highland claim at zero is  
10 denied, the plan administrator objects to the claim on  
11 additional grounds. That's -- what's the point of that?

12 MS. VOLKOV: Well, but, Your Honor, the plan  
13 administrator is not willing to do that. The plan  
14 administrator is not willing to do that so, perhaps, perhaps  
15 and, you know, I haven't had a discussion with Mr. Fail  
16 about it, but perhaps I can get a better understanding as to  
17 exactly what they're seeking on July 22nd by way --

18 THE COURT: They're seeking to estimate the claim  
19 --

20 MS. VOLKOV: I know. But --

21 THE COURT: -- at zero.

22 MS. VOLKOV: But by way of due process. Are we  
23 having a substantive hearing on the merits of all these  
24 claims on July 22nd or are we going to be embarking on  
25 perhaps discovery and an actual hearing as to the estimation

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1 of the claim? Maybe we will seek relief to say that the  
2 claim should be estimated at \$5 million, which is exactly  
3 what the claim is valued today. In other words, that's the  
4 claim amount today was originally \$10 million. It's now  
5 been reduced to \$5 million.

6 So perhaps we can get a better understanding as to  
7 whether this is essentially a summary judgment motion on  
8 July 22nd --

9 THE COURT: This is not a hearing on the motion to  
10 estimate. This is a hearing on one objection to a logical  
11 and reasonable request by the plan administrator to continue  
12 to proceed logically and expeditiously to deal with claims  
13 in a manner that makes sense rather than object on grounds  
14 that may not be relevant because the claim may be disposed  
15 upon -- disposed of on other grounds. It doesn't make sense  
16 for anybody, including Highland, to force a litigation that  
17 may not have to occur.

18 The premise of the estimation motion is that the  
19 claims are being satisfied by other parties. So to the  
20 extent that you want to have a conversation with Mr. Fail,  
21 he will be most happy, I'm sure, to discuss that with you.  
22 Nothing's going to happen by ambush on the 22nd.

23 But the whole tone and theme of all your  
24 objections thus far have been lack of transparency, Judge  
25 Peck insisted on transparency, we have to know what's

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1 happening. Now you know what's happening. There's a motion  
2 to estimate it at zero on the grounds that are set forth in  
3 the motion. There's going to be a hearing. I actually  
4 don't know what the contours of that hearing look like. Mr.  
5 Fail will tell you. If you have a problem with that, you  
6 can contact me. I will move it along.

7 But I'm not going to insist that the plan  
8 administrator file a claims objection that at this juncture  
9 is unnecessary either to advance the ball or to inform your  
10 client and proceed down a litigation path that may be wholly  
11 unnecessary.

12 If the estimation motion doesn't succeed with  
13 respect to -- with respect to your client, I'll hold their  
14 feet to the fire to file an objection expeditiously on  
15 whatever grounds that may remain.

16 MS. VOLKOV: Okay. I appreciate that, Your Honor,  
17 and I still would, you know, respectfully request the Court  
18 to rule that the -- at least the request to estimate the  
19 claim or to extend --

20 THE COURT: Well --

21 MS. VOLKOV: -- has been rendered moot.

22 THE COURT: -- I'll let Mr. Fail respond to that.  
23 I think I know what his answer is going to be, but --

24 MS. VOLKOV: Thank you.

25 THE COURT: -- but let me hear what he has to say.

1                   MR. FAIL: Thank you, Your Honor, and I won't take  
2 much time to --

3                   THE COURT: Okay. So --

4                   MR. FAIL: -- to go over points --

5                   THE COURT: -- with respect to the point about the  
6 extension of the time to make a motion to estimate, what's  
7 the response?

8                   MR. FAIL: It's not moot at all, Your Honor. As  
9 Your Honor identified, there are many claims that are  
10 subject to the motion. There are no objections on file yet.  
11 We don't know what the contours of any hearing will be.

12                  THE COURT: But counsel's point is that you wanted  
13 an extension of time to make a motion to estimate. You've  
14 now made a motion to estimate, so why do you need an  
15 extension of time?

16                  MR. FAIL: The same reason that we -- that we  
17 sought the extension the last time from -- for claims that  
18 were pending an objection. In the event that a summary  
19 objection is not granted at a sufficiency hearing, at a  
20 sufficiency level hearing, the plan administrator has not  
21 yet or may not have yet analyzed each of the claims.

22                  For example, in this one case in particular it's  
23 based on -- I think a master repurchase agreement with  
24 Libby. The plan administrator -- there is no specific  
25 guarantee so for the plan administrator to value a

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1 transaction which it doesn't believe is a guarantee, that's  
2 a threshold issue that we would -- we would have a  
3 sufficiency hearing on, whether or not they asserted a claim  
4 that's even a valid claim before we value repurchase  
5 agreements.

6 We would also --

7 THE COURT: And that --

8 MR. FAIL: -- and under the --

9 THE COURT: And that in and of itself would be --

10 MR. FAIL: That's --

11 THE COURT: -- an estimation hearing or --

12 MR. FAIL: Well, no, Your Honor.

13 THE COURT: -- a sufficiency hearing.

14 MR. FAIL: That could be a sufficiency hearing.

15 Also, the estimation motion points out in order  
16 for a party to receive a distribution, you know, it cannot  
17 have received from Libby. Ms. Volkov hasn't stated how much  
18 of the \$5 million Highland has already received from Libby.

19 You know, there's also other issues, it's a  
20 Bermudian company: Does it have assets; is it one of the  
21 Highland funds that was in -- that became insolvent in '08,  
22 '09; can it repay enough. There's a lot that can have to  
23 follow from an estimation hearing before we move onto an  
24 objection and spend resources and divert the court's time.

25 And the only last thing that I would add is, Your

1 Honor, in terms of, you know, Highland or any other party  
2 moving to, you know, bring their claim forward, the claims  
3 process was designed to give the plan administrator the  
4 discretion in order to allow the plan administrator to  
5 schedule a sufficiency hearing before discovery is taken, in  
6 order for the plan administrator to put a matter into an ADR  
7 process before burdening the Court, and allowing any one  
8 creditor to jump the line to -- with respect to its claim  
9 because it believes it's more important than any of the  
10 billions of others, you know, we think would be the wrong  
11 message to send to creditors. And it would be --

12 THE COURT: Well, to the extent that -- and I'm  
13 not going to turn this into a hearing on the motion to  
14 estimate. But to respond to counsel's concern about having  
15 a full and better understanding of what you anticipate or  
16 expect or tee up on the hearing, you should have a  
17 conversation with counsel.

18 MR. FAIL: Absolutely.

19 THE COURT: And -- but it's a two-way conversation  
20 because to the extent that the plan administrator is seeking  
21 to understand the amount that has already been paid by Libby  
22 on the -- with respect to the claim, that informs the  
23 process going forward --

24 MR. FAIL: Certainly.

25 THE COURT: -- and could substantially narrow the

1 field.

2 So it is -- it is a two-way street. And I think  
3 you both ought to talk to each other and see if there's a  
4 more cooperative way to move this forward.

5 MR. FAIL: Absolutely, Your Honor.

6 THE COURT: All right. All right. Anything  
7 further from Highland?

8 MS. VOLKOV: I mean, I -- Your Honor, I'm sorry.  
9 I didn't really hear a response, but I'm not going to  
10 belabor the point. Your Honor will do --

11 THE COURT: What do you mean you didn't hear a  
12 response?

13 MS. VOLKOV: I didn't hear a direct response to  
14 the question of why they need additional time to seek to  
15 estimate Highland's claim.

16 THE COURT: Because there --

17 MS. VOLKOV: So --

18 THE COURT: Because there may be further  
19 proceedings that are required.

20 MS. VOLKOV: Right. But the further proceedings  
21 are all going to be encompassed either under 502(c) or to  
22 the extent Your Honor denies that motion, they are going to  
23 be filing, again, a sufficiency or an objection, whatever  
24 you want to call it. But it's either, in my mind, an  
25 estimation or it's a claim objection.

1           So, again, I don't want to belabor the record,

2       Your Honor, but I'm still sort of at a loss as to why --

3           THE COURT: You want to try it one more time, Mr.

4       Fail.

5           MS. VOLKOV: That part of the relief --

6           MR. FAIL: The plan administrator -- what -- I  
7       think what Highland wants us to say in a couple of different  
8       ways is that we've analyzed -- and which I'm not willing to  
9       do -- is that we've analyzed the claim fully; that we know  
10      the valuations; that we're prepared to lodge every either  
11      objection or motion to estimate. And the plan administrator  
12      isn't prepared to do that because it doesn't want to spend  
13      the resources to, you know, swat a fly 20 times if the first  
14      time killed it.

15           THE COURT: So let me restate that. So there  
16      might be an additional motion to estimate --

17           MR. FAIL: There may very well be additional  
18      motions to estimate.

19           THE COURT: That's his point. Okay. That's the  
20      point. That's what my surmise was before Mr. Fail spoke the  
21      first time. That's what I understood him to be saying. But  
22      the fundamental point that I'm going to come back to, and I  
23      think we've already belabored this enough, is that this is  
24      not a case of the plan administrator keeping a party in the  
25      dark and refusing to budge.

1 I understand that we are as many years out as we  
2 are. But it -- there's a logic to the manner in which it's  
3 moving forward. It is moving forward. And we've now opened  
4 a dialogue and there's going to have to be a dialogue with  
5 respect to anybody who is interested in dialoging that will  
6 move things forward.

7 So the objection is overruled with respect to  
8 Highland and the extension of time will be granted across  
9 the board.

10 MS. VOLKOV: Thank you.

11 THE COURT: All right.

12 MR. FAIL: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 Is there anything else, Mr. Fail?

15 MR. FAIL: Your Honor, there is one more item that  
16 is not -- was not on the agenda.

17 On behalf of the Chapter 11 estates and its  
18 professionals, I would like to take a moment to acknowledge  
19 and thank Ms. Stacy Lutkiss (ph) for her years of service as  
20 a judicial clerk to the court.

21 To add some historical context, Ms. Lutkiss's  
22 first day on the -- with the Court was in April of 2009 on a  
23 day when Weil and other professionals were first filing  
24 their first interim fee applications in these cases. The  
25 docket was 3,342, more than 46,800 docket entries ago.

1           It was before the bar date and the subsequent  
2         filing of 69,000 claims. Ms. Lutkiss was there through the  
3         filing in 2010 of a subcon (sic) plan and the filings of a  
4         non-con plan and the historic confirmation of Lehman's  
5         compromised plan in 2011.

6           Ms. Lutkiss served the Court through hearings to  
7         consider complex adversary proceedings, contested matters,  
8         sales, settlements, protocols and orders in aid of execution  
9         of the confirmed plan.

10           As importantly, Your Honor, for years Ms. Lutkiss  
11         was the everyday resource for both the estate's  
12         professionals and all parties in interest in these cases,  
13         ensuring that all parties' voices were heard and all matters  
14         received the attention they were due.

15           Her dedication and availability were undeterred by  
16         weather, natural disaster, personal illness or personal  
17         travel. Her dedication to the Court in these cases in  
18         particular cannot be understated and was not unnoticed.  
19         All creditors in these cases have benefited from her  
20         service.

21           As a small token of tremendous appreciation, and  
22         with the understanding that a clean break from Lehman can be  
23         difficult, with the Court's permission I would like to  
24         present Ms. Lutkiss with some abandoned property.

25           THE COURT: I assume that any such items and the

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1 giving of them to Ms. Lutkiss are consistent with applicable  
2 ethical guidelines --

3 MR. FAIL: They are.

4 THE COURT: -- that are --

5 MR. FAIL: They are non-failable and there's no  
6 market value for these goods.

7 The first item is a vintage 2008 edition Lehman  
8 Brothers hat. We have some Lehman luggage tags for your  
9 travel, and a Lehman mouse pad for her success in future  
10 desktop endeavors. And with your permission, Your Honor,  
11 I'll present it to Ms. Lutkiss.

12 THE COURT: Yes. You may approach, Mr. Fail.

13 (Pause)

14 MR. FAIL: Thank you, Your Honor. That's all .

15 THE COURT: Thank you.

16 MR. FAIL: That's all that we have.

17 THE COURT: Does anyone else wish to be heard?

18 MR. PECK: Oh, excuse me, Your Honor. Excuse me.  
19 And I apologize for interrupting.

20 THE COURT: Sir --

21 MR. PECK: My name is --

22 THE COURT: -- can I help you?

23 MR. PECK: My name is -- yeah. My name is James  
24 M. Peck.

25 THE COURT: Yes.

1 MR. PECK: I am admitted to practice in the  
2 Southern District of New York. I'm requesting this  
3 opportunity to be heard now.

4 THE COURT: But aren't you located --

5 MR. PECK: I'm just --

6 THE COURT: -- in --

7 MR. PECK: I'm just a --

8 THE COURT: Aren't you located in Manhattan, Mr.  
9 Peck?

10 THE COURT: I'm sorry. I'm just a short subway  
11 ride away. But for cause shown I request -- I would humbly  
12 request your indulgence and waiver of chambers rule to  
13 appear by telephone so I can say a few words of warm  
14 appreciation regarding Stacy Lutkiss. Would that be okay?

15 THE COURT: Just this once. Yes, you may proceed,  
16 Mr. Peck.

17 MR. PECK: Thank you. Thank you, Your Honor.

18 May it please the Court? I am the former United  
19 States Bankruptcy Court Judge who presided in this Court  
20 over the Lehman bankruptcy cases from September 15, 2008  
21 until my retirement in January of 2014.

22 I was truly fortunate that Stacy Lutkiss was my  
23 law clerk for the last five years of my judicial tenure.  
24 She was and remains an enormously valuable asset to the  
25 Court and helped me to research and write some of the most

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1 important decisions that were issued in the Lehman cases.

2 She served me and the parties who appeared before  
3 me in cases large and small very well. And she provided  
4 wise counsel and thoughtful, always dependable assistance to  
5 me in managing the largest and most complex insolvency cases  
6 in history.

7 She is a person of uncommonly good humor and sound  
8 judgment, and she is a trusted colleague. I wish her great  
9 success and personal satisfaction as she leaves the familiar  
10 surroundings of One Bowling Green for the green, not  
11 necessarily greener, academic quadrangles of upstate New  
12 York.

13 Stacy, many thanks for your outstanding service  
14 and best of luck to you.

15 THE COURT: Thank you, Mr. Peck.

16 MR. PECK: Thank you, Your Honor.

17 THE COURT: Thank you. Have a good day.

18 I think we're adjourned.

19 MR. FAIL: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 (Whereupon, these proceedings concluded at 11:32 a.m.)

22

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1 C E R T I F I C A T I O N

2

3 I, Sherri L. Breach, certify that the foregoing transcript  
4 is a true and accurate record of the proceedings.

5

Sherri L  
Breach



Digitally signed by Sherri L Breach  
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Date: 2015.07.02 14:46:15 -04'00'

6

7 SHERRI L. BREACH

8  
9 AAERT Certified Electronic Reporter & Transcriber CERT\*D-397

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12 DATE: July 2, 2015

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